IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

SECOND APPEAL No. 321 OF 2006

Tamiz Hussain s/o Tayyab Husain
v.
Abdul Sattar s/o Sk. Gulab

Office Notes, Office Memoranda of Coram appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders

Mr.Tanveer Iqbal Advocate for the appellant.

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CORAM: A.B. CHAUDHARI, J.
DATED : 29h OCTOBER, 2007.

Heard learned counsel for the appellant. Concurrent findings of fact recorded by the courts below are put to challenge in this second appeal. Both the courts below have recorded a finding that the appellant/plaintiff failed to prove ownership over the suit property which was claimed under the oral gift-deed alleged to have been made by one Jamilabi. The trial court upon appreciation of evidence dismissed the suit. The appellate court in its judgment in para 16

has held as under :

> “I am very much afraid whether the evidence of this material witness satisfies the requirements of oral gift of immovable property under Mohammaden Law. Evidence of this witness clearly suggests that she unilaterally without making a public statement of the gift allegedly gifted away two acres of land in favour of his son. There is absolutely no evidence on her part to show that at the time of making the gift whether anybody was present and since it is not so, it is not clear as to how the important requirements of declaration of gift is satisfied. I have already mentioned that in order that a declaration of gift is established, it must be shown that the doner either in presence of witnesses or otherwise made a public statement that he gifted the property in favour of the donee and that he divested himself of the ownership of the property by delivering such possession as the property is capable of to the donee, who accepted the gift. Unfortunately, it is not so and it

> can not be said to be a valid gift inasmuch as it is unknown to law that a Mohammedan can make a oral gift within the confines for his house and without the presence of anybody else and canvass the plea that by making such a declaration allegedly of the gift, the valid requirements of a gift are satisfied."

From the above, it is seen that the finding of fact has gone against the appellant and both the Courts have based the same on evidence on record and have also found that the oral gift was not as per the requirements of Mohammedan Law. I do not find any substance in the appeal. No substantial question of law is involved in this appeal. Second appeal is dismissed.

JUDGE

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